(3)

No. 83-2146

In the Supreme Court of the United States

OCTOBER TERM, 1983

RICHARD WILSON and MARTIN VIGIL,
Petitioners,

v.

GARY GARCIA,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

MOTION OF OKLAHOMA COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF OKLAHOMA, FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE IN SUPPORT OF REVERSAL

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Oklahoma County, State of Oklahoma, pursuant to Rule 36 of the Rules of this Court, respectfully moves for leave to file the attached brief *amicus curiae* in this case. Oklahoma County is a political subdivision of the State of Oklahoma and its counsel of record herein is its authorized legal representative. Pursuant to Rule 36.4 of the Rules of this Court, consent to the filing of the attached brief *amicus curiae* is not necessary. Counsel of record for the Petitioners have, however, given their consent orally to the filing of the attached brief by Oklahoma County, a Political Subdivision of the State of Oklahoma.

The interest of Oklahoma County in this case arises by virtue of its location as one of six states within the

Tenth Circuit and by the fact that the rulings of that Circuit's Court of Appeals are controlling in federal civil rights suits brought in Oklahoma. Oklahoma County has numerous civil rights cases pending in its Federal District Court wherein the applicable state statute of limitations will be dispositive. Oklahoma is also one of six states within the Tenth Circuit wherein the rule announced in *Garcia* v. *Wilson*, 731 F.2d 640 (10th Cir. 1984), as to the applicable state statute of limitations to be applied in cases brought under 42 U.S.C. §1983, has led to an irreconcilable conflict between state and federal law.

WHEREFORE, Oklahoma County, a Political Subdivision of the State of Oklahoma, herewith submits and, to the extent necessary, requests leave to file the attached brief *amicus curiae* on its merits.

Dated this 13th day of November, 1984.

Respectfully submitted,

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AMICUS CURIAE BRIEF OF OKLAHOMA COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF OKLAHOMA

INTEREST OF AMICUS CURIAE

Oklahoma County, as a political subdivision of the State of Oklahoma, sits bound by the rulings of both the Oklahoma Supreme Court and of the Court of Appeals for the Tenth Circuit applying state procedural limitations periods to claims brought under 42 U.S.C. §1983. Oklahoma County has pending several federal civil rights suits wherein the applicable state statute of limitations will be dispositve.

As is true in New Mexico, Petitioners' home state, the Tenth Circuit has applied its holding in *Garcia* v. *Wilson*, 731 F.2d 640, at 651 (March 30, 1984), to Oklahoma, in *Abbitt* v. *Franklin*, 731 F.2d 661 (March 30, 1984). In so doing, the Tenth Circuit has disregarded the limitations

period held applicable by Oklahoma's highest state court to the same type of claim brought in state court. Thus has arisen an irreconcilable conflict in Oklahoma between federal and state courts upon a procedural matter not governed by federal law, and upon which both Congress and this Honorable Court have declared state law shall control. This clash between state and federal courts sitting in Oklahoma, upon matters in which the interpretations of the highest court of the state must control, can only be remedied by this Court's reversal of *Garcia* v. *Wilson*, supra, and a resulting return to the straightforward application of the rules and principles enunciated and protected by this Court since *Bauserman* v. *Blunt*, 147 U.S. 647, 13 S.Ct. 466, 37 L.Ed. 316 (1893), and culminating in *Board of Regents* v. *Tomanio*, 446 U.S. 478, 100 S.Ct. 1790, 64 L.Ed.2d 440 (1980).

SUMMARY OF ARGUMENT

The decision and the rationale of *Garcia* v. *Wilson* is contrary to the Tenth Amendment and to the principles of federalism embodied therein. Further, federal courts are bound by the highest state court's construction of its own statute of limitations in Section 1983 actions. This is specifically mandated by Congress, in 42 U.S.C. §1988, and by this Court's rulings in the trilogy of *Johnson* v. *Railway Express Agency, Inc.*, 421 U.S. 454, 95 S.Ct. 1716, 44 L.Ed. 2d 295 (1975); *Robertson* v. *Wegmann*, 436 U.S. 584, 98 S.Ct. 1991, 56 L.Ed.2d 554 (1978), and *Board of Regents* v. *Tomanio*, 446 U.S. 478, 100 S.Ct. 1790, 64 L.Ed.2d 440 (1980). Section 1988, by its express terms, authorizes federal courts to disregard applicable state law *only* if the law is "inconsistent with the Constitution and laws of the United States".

Thus, a state's statute of limitations may not be rejected and displaced with some ad hoc federal rule in the name of uniformity and the advancement of goals of federalism.

Recognizing but not following these fundamental principles of law and federalism, the Tenth Circuit resolved to use the certification of a narrow question of conflict to impose a broad and sweeping rule upon its federal district courts and to:

> ". . . establish a uniform approach to govern resolution of this question in future cases."

Garcia v. *Wilson*, supra, at 642. In justification thereof, the Court of Appeals declared:

> "In the face of Congressional refusal to enact a uniform statute and the Supreme Court's failure to come to grips with the problem, it is imperative that we establish a consistent and uniform framework by which suitable statutes of limitations can be determined for all section 1983 claims in this circuit."

Id. at 643. Your *amicus curiae* submits that the conclusions and the ruling in *Garcia* v. *Wilson*, supra, are:

> ". . . at odds with the reasoning in our prior opinions in this field as well as at odds with federalism itself."

Board of Regents v. *Tomanio*, 446 U.S. 478, 489, 100 S.Ct. 1790, 1797.

ARGUMENT

I. THE TENTH CIRCUIT'S REPUDIATION OF CONTROLLING STATE LAW IS VIOLATIVE OF THE TENTH AMENDMENT AND OF LONGSTANDING PRINCIPLES OF FEDERALISM.

Under the guiding hand of this Court and the Constitution, hand in hand participation between federal and state governments and courts have met with a success that neither could have unilaterally.

> "These facts stand out as a result of this analysis of the Philadelphia Convention and the state ratifying conventions. Both the nationalists and the states' righters were in substantial agreement on the need for a supreme judicial arbiter in federal-state relations. By 1789 it was clearly understood that the Supreme Court of the United States was to fulfill that role. Naturally enough, the nationalists tended to emphasize the aspect of judicial arbitership concerned with the protection of national supremacy against state encroachments. However, both nationalists and states' righters explicitly recognized that the Supreme Court's role was that of an impartial arbiter. Thus, it was also anticipated that federal laws violative of state's rights were to be declared unconstitutional . . ." [1]

Thus, it is to this Court that the States look for relief in preserving and protecting the principles of federalism guaranteed in the Tenth Amendment. Indeed, the rule of law has been violated by both the holding and the rationale of *Garcia* v. *Wilson*. Use of the Court of Appeals' stratagem

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[1] SCHMIDHAUSER, *States' Rights and the Origin of the Supreme Court's Power in Federal-State Relations*, 4 Wayne Law Review 101, 104 (1958).

of uniform "characterization" does not eclipse the fact that the lower federal court has elevated its own desire for uniformity above the law of the Constitution, the law of Congress, and the law of this Supreme Court. It is not suggested that some uniformity upon the application of limitations periods in suits brought under Section 1983 is an evil goal. But we must remember that the very concept of federalism embraces diversity of laws. Until Congress acts under power of the Fourteenth Amendment to repeal or amend Section 1988, this Court must be vigilant in protecting the States from such unwarranted federal usurpation. As stated by Justice Harlan Fiske Stone, in dissent to the opinion of the Court in *United States* v. *Butler:*

> "The present stress of widely held and strongly expressed differences of opinion of the wisdom of the Agricultural Adjustment Act makes it important, in the interest of clear thinking and sound result, to emphasize at the outset certain propositions which should have controlling influence in determining the validity of the act. They are:
>
> 1. The power of courts to declare a statute unconstitutional is subject to *two guiding principles of decision which ought never to be absent from judicial consciousness. One is that courts are concerned only with the power to enact statutes, not with their wisdom. The other is that while unconstitutional exercise of power by the executive and legislative branches of the government is subject to judicial restraint, the only check upon our own exercise of power is our own sense of self-restraint. For removal of unwise laws from the statute books appeal lies, not to the Courts, but to the ballot and to the processes of democratic government . . .*"

297 U.S. 1, 78-79, 56 S.Ct. 312, 325, 80 L.Ed. 477 (1936) [Emphasis added]. And by Justice Felix Frankfurter, in dissent to the Court's opinion in *West Virginia Board of Education* v. *Barnette*:

> "... *It can never be emphasized too much that one's own opinion about the wisdom or evil of a law should be excluded altogether when one is doing one's duty on the bench.* The only opinion of our own even looking in that direction is our opinion whether legislators could in reason have enacted such a law. . . . We have been told that generalities do not decide concrete cases. But the intensity with which a general principle is held may determine a particular issue, and whether we put things first may decide a specific controversy. . . . The Constitution does not give us greater veto power when dealing with one phase of 'liberty' than with another, . . . In neither situation is our function comparable to that of a legislature or are we free to act as though we were a super-legislature. Judicial self-restraint is equally necessary whenever an exercise of political or legislative power is challenged. *There is no warrant in the constitutional basis of this Court's authority for attributing different roles to it depending upon the nature of the challenge to the legislation. Our power does not vary according to the particular provision of the Bill of Rights which is invoked . . .*"

319 U.S. 614, 647-648, 63 S.Ct. 1178, 1189-1190, 87 L.Ed.2d 1628 (1943) [Emphasis added].

The Court of Appeals rationalizes its decision in *Garcia* by declaring:

> "... Uniformity of characterization will not result in one limitations period being applied to all civil rights cases regardless of the state in which they arose . . ."

731 F.2d at 651 n4. However, this does not alter the fact that the rule of *Garcia* imposes a uniform statute of limitations upon all civil rights cases, whatever their genesis, within each State. Any regard for a state legislature's policies and considerations is either disdained or ignored by the Tenth Circuit in *Garcia*. *Garcia* seeks to look behind the authority of the states to some imagined "motivation" of their legislatures, indeed to some "possibility" of undesirable results to one party in the federal district courts, in making these assertions:

> "... Limitations periods . . . may well be motivated by a legislative desire to limit the liability of the public entity employer . . ." [2]

731 F.2d at 649. And,

> "... uneven application may cause the losing party to infer that the choice of a limitations period in his case was result oriented . . . This objectionable possibility is particularly undesirable in the context of socially sensitive civil rights litigation . . ."

Id. at 650.

These excerpts, and the entirety of the opinion, make clear that the Tenth Circuit's "own opinion about the wisdom or evil" of state law is at the heart of *Garcia*. *Garcia* is the penultimate of super-legislation by a federal court, for its rule effectively strikes down controlling state law relating to one particular application but not another; and the law is stricken not because it is unconstitutional or

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[2] Notably, 12 O.S. 1981, §95, Oklahoma's statute of limitations, was enacted in Statutes 1893, §3890, and codified in Oklahoma Revised Laws 1910, §4657 — preceding considerably this Court's landmark decision in *Monroe* v. *Pape*, 365 U.S. 167, 81 S.Ct. 473, 51 L.Ed.2d 492 (1961)

otherwise unauthorized, but because it does not conform itself to the particular notions of federal values held by the Tenth Circuit at this time. *Garcia* compels the prescient observation of this Court in *Tomanio*, 446 U.S. 478, 491-492, 100 S.Ct. 1790, 1799:

> "Finally, we do not believe that this construction of congressional intent is overridden, as the Court of Appeals found, 'in the interests of advancing the goals of federalism.' We believe that the application of the New York law of tolling is in fact more consistent with the policies of 'federalism' invoked by the Court of Appeals than a rule which displaces the state rule in favor of an ad hoc federal rule . . ."

II. THE RULE AND RATIONALE OF *GARCIA* v. *WILSON* ARE IN DEROGATION OF THE LAW OF CONGRESS AND OF THIS HIGH COURT.

The rule set forth in *Garcia* rests upon a tripartite foundation. First:

> ". . . the facts establishing a Constitutional or statutory deprivation frequently are complex and peculiarly within the knowledge of the defendant. (citations omitted.) The plaintiff need not prove such facts to recover in a state law action. . . . Accordingly, a state's determination that a state claim should be governed by a particular limitations period to ensure accuracy in the fact finding process is not necessarily applicable to a federal claim arising out of the same incident . . ."

731 F.2d at 649. Second:

> "While we agree . . . that the state's judgment in setting limitations periods is typically concerned with fact finding accuracy and settled expectations, those purposes are not the only ones motivating the enact-

> ment of such statutes. Limitations periods . . . may well be motivated by a legislative desire to limit the liabilty of the public entity employer . . ."

Id. at 649. And most revealing is:

> ". . . attempting to determine which state claim is most nearly comparable is an uncertain task with no definitive answer."

Id. at 650.

Lack of uniformity makes the task uncertain only in requiring federal courts to carefully examine the basis of each claim in a case-by-case approach. Intimations that state legislators enact limitations periods, which often remain unaltered from statehood, with a design to circumvent federal rights under Section 1983, is simply unfounded in fact or in logic. Facts giving rise to the state or federal remedy, when arising out of the same incident, differ only in their federal constitutional import and in the requirement that the defendant have acted under color of state law. *These* elements are the focus of the federal remedy and, while complex, do not alter the underlying facts which may give rise to it. If an assault and battery is the factual basis of the federal claim, the same assault and battery is the factual basis of the state claim. What is different is the magnitude of injury and the remedy provided — not the facts themselves. While some underlying facts may be more difficult to analogize to state claims, these questions are justly resolved, within the lawful confines of Section 1988 and this Court's rulings, by applying the longer of the state limitations periods.

Congress has mandated that the applicable law of the states shall extend to and govern the federal courts as to

limitations periods upon federal civil rights claims. See 42 U.S.C. §1988, in light of federal silence upon the matter in 42 U.S.C. §1981, 1982, 1983, 1985. There is but one exclusive exception to this Congressional mandate — where such state law is "inconsistent with the Constitution and the laws of the United States." 42 U.S.C. §1988. The historical, philosophical and political considerations underlying the Civil Rights Act of 1871 has led this Court to hold of its later codification:

> "... The policies underlying §1983 include *compensation* of persons injured by deprivation of federal rights *and prevention* of abuses of power by those acting under color of state law."

Robertson v. *Wegmann*, 436 U.S. at 591, 98 S.Ct. at 1995 [Emphasis added]. This Court painstakingly outlined the importance of both state and federal policies of repose, accuracy of fact finding and settled expectations underlying state statutes of limitations in *Board of Regents* v. *Tomanio*, supra. This Court perceived nothing in these policies which is inconsistent with the Constitution or laws of the United States, nor with the specific policies underlying Section 1983. This Court found, rather, that state statutes of limitations are binding rules of law which Congress has instructed the federal courts to refer to in Section 1983 actions unless inconsistent with the policies expressed therein. See also *Robertson* v. *Wegmann*, supra. Examining the desire for uniformity as justification for displacement of otherwise applicable state rules of law, this Court has thrice held that need for uniformity does not warrant displacement of state statutes of limitations in federal civil rights actions. *Tomanio*, supra; *Robertson*, supra; *Johnson*, supra. Even where this Court has found uniformity to be paramount under

some federal actions, it has specifically excluded federal civil rights actions under Section 1983, finding:

> "... Section 1988 does not in terms apply to Bivens actions, and there are cogent reasons not to apply it to such actions even by analogy. Bivens defendants are federal officials brought into federal court for violating the Federal Constitution. No state interests are implicated by applying purely federal law to them. While it makes some sense to allow aspects of §1983 litigation to vary according to the laws of the States under whose authority §1983 defendants work, federal officials have no similar claim to be bound only by the law of the State in which they happen to work. (citation omitted) ..."

Carlson v. *Green*, 446 U.S. 14, 24 n.11, 100 S.Ct. 1468, 1474-1475, 64 L.Ed.2d 15 (1980).

There is, in fact, not one basis asserted in *Garcia* that this Court has not already rejected in interpreting the provisions of Section 1988 as they apply to Section 1983. The rationale of the case being contrary to law, so is its rule which has been thrust upon the six states comprising the Tenth Circuit.

CONCLUSION

Both the rule and the rationale of *Garcia* v. *Wilson* are violative of the Tenth Amendment to the United States Constitution and to the principles of federalism expressed therein; are violative of the mandate of Congress under 42 U.S.C. §1988; and are contrary to the law set forth by the United States Supreme Court.

The opinion of the Court of Appeals for the Tenth Circuit in *Garcia* v. *Wilson* must, therefore, be reversed by this Court.

Respectfully submitted,

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